

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3254 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANSANG P RATHI

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR SHIRISH JOSHI for Petitioner

MS PREETI S PARMAR for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/01/97

C.A.V. JUDGEMENT

1. The petitioner by this Special Civil Application has challenged the orders of the respondents, annexures 'G', 'I' and 'J' passed under the provisions of the Essential Commodities Act, 1955. 200 cement bags of the petitioner were ordered to be confiscated.
2. The facts of the case, in brief, are that the petitioner, M/s. Mansang Parmanand Rathi was having

Cement Licence No.2/1979 granted under the provisions of Cement Licence and Control Stock Declaration Order of 1978 (hereinafter referred to as the Order, 1978). On 10-5-1982, upon making the inspection of cement account of the petitioner by the Supply Inspector, it has been found that the petitioner has not filed application for obtaining the new licence regarding the cement with effect from 31st July, 1981 under the provisions of Essential Commodities (Licensing, Control & Stock Declaration) Order, 1981 (hereinafter referred to as the Order, 1981). It has further been found that the petitioner did the business of the sale of cement from 1-8-1981 to 19-3-1982 without licence. On 10-5-1982 during the inspection, there was stock of 200 bags of cement in possession of the petitioner and the same was ordered to be seized under sec.6(A) of the Essential Commodities Act, 1955. The petitioner on 24th June, 1982 filed an application for release of 200 cement bags on furnishing a Bank Guarantee worth Rs.13000/-. Considering it to be a perishable commodity, on bank guarantee of Rs.13000/-, 200 cement bags were ordered to be released.

3. The petitioner was given a show-cause notice to show cause why full amount of 200 cement bags should not be forfeited for contravention of the provisions of the Order, 1981 and as to why criminal proceedings should not be initiated. On behalf of the petitioner, Shri Jayendrakumar Vasantray Rathi, partner of the petitioner, was present in response of the said show-cause notice. His statement has also been recorded wherein he has admitted that the firm has done the business without obtaining the Cement Licence under the Order, 1981. The reply to the show-cause notice has also been filed. The petitioner has given out that an application for licence has been made on 19th March, 1982 before the Mamlatdar, Jamnagar city and that application was pending. The petitioner was not knowing about the provisions of the Order, 1981 and he was under a bonafide belief that the licence was not required to be taken. On 28th April, 1982, 200 cement bags from Dwarka Cement Factory were received by the petitioner and it has received that quantity of cement under the licence which was valid upto 31st December, 1983. The explanation has been given for non-filing of the application under the provisions of the Order, 1981 that the petitioner was not aware of that Order. The petitioner has made a categorical statement before the first authority that it does not want to produce any other evidence, witness or documents. The first authority found it to be a case of violation of Para 3(1) of the Order, 1981 and consequently the order

has been made for confiscation of 200 bags of cement which has been released on a bank guarantee worth Rs.13000/- and hence the amount of Rs.13000/- was ordered to be forfeited. Against this order, the petitioner filed an appeal which came to be dismissed under the order dated 30-10-1982 of the State Government. In the appeal, the petitioner has made the following submissions.

- (1) The petitioner started the business of cement in 1923. Associated Cement Company had appointed the petitioner to be its agent in the year 1930. The petitioners are the reputed businessmen and till today, no complaint has been lodged against them.
- (2) As per the provisions of the Order, 1978, licence was taken by the petitioner which was renewed upto 31st December, 1983. As per the Order, 1981, the petitioner has to apply for licence on or before 31st July, 1981, but it could not be done as they had no knowledge of the new provisions as well as they were under a bonafide belief that their licence was valid upto 31st December, 1983.
- (3) They have applied for the licence on 19th March, 1982 and necessary amount of licence fees has also been deposited. The cement has been received on 28th April, 1982, but no sale has been made of the aforesaid cement. The petitioner has not been informed that the application for licence has been rejected.

The petitioner challenging the orders of the authorities below has filed this Special Civil Application.

4. The counsel for the petitioner has made those very submissions which have been made by the petitioner before the appellate authority. During the course of arguments, the counsel for the petitioner admitted that the petitioner has contravene the provisions of the Order, 1981. The explanation given by the petitioner is that under the provisions of the Order, 1981, the application could not be submitted for the licence as the petitioners were not aware of the Order, 1981 as well as the licence granted to them under the Order, 1978 was renewed upto 31st December, 1983. It has further been contended that the petitioners are bonafide persons and immediately on knowing that they have to apply for the licence under the provisions of the Order, 1981, an

application has been submitted on 19th March, 1982, and requisite fees etc. has also been paid, and the 200 cement bags which have been received by the petitioner on 28th April, 1982 were kept in tact and no sale was made even of single bag of cement. Summing up the contentions, the counsel for the petitioner contended that it is a case where a technical breach of provisions of the Order, 1981 has been made, and as such, the confiscation of 200 bags of cement is highly excessive and harsh.

5. On the other hand, the counsel for the respondents contended that ignorance of the Order, 1981 can be shown and put into service by the petitioner. The contravention of the Order, 1981 was there, as the petitioner carried on the sale of cement from 1st August, 1981 to 19th March, 1982 without licence. The petitioner, as per his own case, was an experienced businessman and a stockist of M/s. Associated Cement Co. Ltd., and it has come on the record that it is carrying on business since 1923 and stockist of the aforesaid company since 1930, and as such, it is difficult to believe that the petitioner had no knowledge of the Order, 1981. The explanation which has been given by the petitioner to justify the contravention of provisions of the Order, 1981 is nothing but a manufacture defence, and as such, both the authorities have rightly not relied upon the same. The authorities have taken a lenient view in the case, and as such, this court may not interfere in the orders made by the authorities below.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is a case where the petitioner has carried on his business of sale of cement without licence. The petitioner has to obtain licence under the provisions of the Order, 1981, and for which an application has to be submitted on or before 31st July, 1981 which the petitioner has not made. Not only this, but the petitioner has carried on the business also. So it is a clear case where the provisions of Clause 3(1) of the Order, 1981 have been contravened by the petitioner. It is difficult to accept that the petitioner, a businessman of sufficient long experience and dealing with the essential commodities, may not have the notice of Order, 1981. The explanation given that the stock of 200 cement bags which were there with the petitioner were kept in tact and no sale has been made, is hardly of any substance. The petitioner, as per his own case, has made an application for licence under provisions of the Order, 1981 on 19th March, 1982 and the consignment of 200

cement bags were received after 19th March, 1982, and as such, it should not have sold those bags. In case, it would have been done then no defence could have been manufactured by the petitioner as it has been manufactured to give out the explanation for doing of the business of sale of cement from 1-8-1981 to 19-3-1982 without licence. The Order, 1981, has come into force from 20th April, 1981 and sufficient grace time has been granted to the existing licence holders to move an application for licence on or before 31st July, 1981, but it has not been done in the present case. The matter has been decided on the basis of admission made by one of the partners of the petitioner. The appellate authority has not committed any error in holding that ignorance cannot be excused as the matter pertains to the fair distribution of the essential commodities. To avoid any black-marketing as well as for fair distribution of essential commodities, the Orders were being framed from time to time under the provisions of Essential Commodities Act, 1955, and as such, no immunity could have been claimed by the petitioner on the ground on ignorance of provisions of the Order, 1981. The petitioner is a seasoned businessman and he was dealing in the essential commodity for last about 60 years, and as such, it is difficult to accept that the businessman like the petitioner and dealing with the essential commodity would not have the notice of provisions of the Order, 1981. Both the authorities have not committed any error much less a jurisdictional error which calls for interference of this court. It is a reasonable order which has been made by the authority and does not call for interference of this court. The bonafide which has been shown by the petitioner with respect to the stock of cement received after 19-3-1982 has no relevance whatsoever for the petitioner's illegal action of doing the business of sale of cement for the period from 1-8-1981 to 19-3-1982. For the sale of cement during the aforesaid period, the action has been taken for which no satisfactory explanation has been provided. The order of confiscation made in the present case is fully justified.

7. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief granted by this court stands vacated. No order as to costs.

zgs/-